IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSEPHINE JACKSON-GILMORE, Plaintiff,	:	
	:	CIVIL ACTION
v.	:	NO. 04-03759
SCOTT DIXON, *et al*, Defendants.	:	

Memorandum and Order

YOHN, J. November___, 2005

This case involves a dispute between neighbors that has escalated into allegations of conspiracy, harassment, and intimidation. Plaintiff Josephine Jackson-Gilmore brings this action against her former neighbor Stephanie Thomas, alleging Thomas conspired with codefendant, Darby Township Police Officer Scott Dickson,[1] to use his authority to threaten, harass, and assault plaintiff in violation of federal and state law. A history of bad blood existed between the neighbors since 1999, and plaintiff contends that Dickson, having some undefined relationship with Thomas, heightened this acrimony by threatening Jackson-Gilmore on several occasions. This harassment allegedly came to a head in August 2002, when police served an arrest warrant based on a complaint made by Thomas. When the warrant was served, Dickson allegedly used

[1]While the complaint spells the codefendant's last name as "Dixon," the codefendant, in his deposition, corrected this spelling, stating his name was spelled "Dickson." (Scott Dickson Dep. 6-7, May 17, 2005.)

unreasonable force to violently remove Jackson-Gilmore from her home, including beating her after she was handcuffed and slamming her head into the police car. In addition to bringing civil rights claims against both defendants under 42 U.S.C. §§ 1983 and 1985(3), plaintiff alleges Dickson's actions constitute tortious assault and battery.

Currently pending before the court are defendants' motions for summary judgment pursuant to Fed. R. Civ. P. 56(c). Dickson argues that: (1) the statute of limitations bars claims based on conduct occurring prior to August 6, 2002; (2) plaintiff's evidence fails to establish that Dickson was acting under color of law, as required by § 1983; (3) plaintiff does not provide sufficient evidence of a § 1985(3) conspiracy between Dickson and Thomas;[2] and (4) plaintiff's pendent state law claims for assault and battery should be dismissed because plaintiff cannot prove any of her federal claims. In her motion for summary judgment, Thomas argues that plaintiff fails to satisfy the elements of either a § 1983 or § 1985(3) conspiracy.

For the reasons explained below, I will grant defendants' motions with regard to the § 1985(3) conspiracy claim. However, I will deny the motions as to the statute of limitations, the § 1983 claims, and the state law assault and battery claims.

I. FACTUAL BACKGROUND[3]

[2]The court notes that while Dickson's motion for summary judgment states, "Count III Alleging Conspiracy Must Be Dismissed," his argument only addresses conspiracy claims under § 1985(3) despite the fact that Count III also includes conspiracy claims under § 1983.

[3]The account contained in this section is comprised of both undisputed facts and plaintiff's factual allegations. *See Skoczylas v. Atlantic Credit & Fin., Inc.*, No. CIV. A. 00-5412, 2002 WL 55298, at *2 (E.D. Pa. Jan. 15, 2002) ("When considering a motion for summary judgment, a court must view all facts and inferences in a light most favorable to the nonmoving party.") (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)); *see also Brown v. Muhlenburg Township*, 269 F.3d 205, 208 (3d Cir. 2001) (citing *Beers-Capitol v. Whetzel*, 256 F.3d 120, 130 n.6 (3d Cir. 2001)).

In October 1999, Jackson-Gilmore and Thomas became next door neighbors on Tribbet Avenue in Sharon Hill, Pennsylvania. (Jackson-Gilmore Dep. Ex. 1, May 17, 2005.) Almost immediately, a pattern of animosity developed between them. Plaintiff contends that as their relationship deteriorated, Thomas conspired with Darby Township Police Officer Scott Dickson, to use his authority to harass, threaten, and insult Jackson-Gilmore in order to drive her from her home. (Compl. ¶ 24-28.) Plaintiff alleges that Dickson's visits to Thomas's home over the last several years, as well as many of his comments to Jackson-Gilmore, demonstrate this conspiracy. (Pl.'s Resp. to Dickson's Summ. J. Mot. 14.)

According to Jackson-Gilmore, Dickson allegedly used his authority to threaten, harass, and insult her multiple times. (Compl. ¶ 13.) Plaintiff claims to have first met Dickson when he knocked on her door on December 28, 1999. (Jackson-Gilmore Dep. 5:1-5). He had arrived in a police car and was dressed in his police uniform, but he held his badge concealed in his hand and did not reveal his identity to her. (*Id.* at 5:17-6:14.) Dickson allegedly told Jackson-Gilmore that he was there regarding a complaint from her neighbor and that there would be "repercussions" if Jackson-Gilmore did not stop harassing her and her family. (*Id.* at 5-7.) Dickson allegedly refused to tell her who filed the complaint. (*Id.* at 7:12-14.) After Jackson-Gilmore refused to give Dickson her last name and said she was going to the police herself, Dickson allegedly responded: "They're not going to cooperate with you because you're not cooperating with me." (*Id.* at 7:16-20.) Later that day, Jackson-Gilmore gave police official Arnold Covert a letter describing the situation, attempted to find out Dickson's identity, and asked for the matter "to be dealt with in a legal way." (*Id.* at Ex. 1.) After Covert identified Dickson by the name of

"Patterson," plaintiff then went to the police station and tried to confirm this identification. (*Id.* at 20:4-8; 7:21-9:17.) Jackson-Gilmore never heard back from the police. (*Id.* at 10:7-15.)

Plaintiff next saw Dickson on February 14, 2000, after her son called police because of a physical fight between Jackson-Gilmore and Thomas. (*Id.* at 15:9-16:24.) When Dickson and two other officers arrived on the scene, they allegedly ignored Jackson-Gilmore for fifteen minutes. (*Id.* at 15:20-24.) After she requested assistance, Dickson and one officer left, and the remaining officer went to talk to Thomas. (*Id.* at 16:4-8.) After another fifteen minutes, the officer later returned to Jackson-Gilmore, and said nothing could be done unless Jackson-Gilmore got a lawyer and filed a criminal complaint. (*Id.* at 16:4-18.) Two days later, Jackson-Gilmore went back to the police station in order to provide documentation and to inquire into the December 1999 incident. (*Id.* at 10:18-11:21.) Again, no information was available to her at the police station. (*Id.* at 11:8-11.)

Despite this lack of information, Jackson-Gilmore continued to request help from the police and local community groups regarding the incident and her continuing dispute with Thomas. (*Id.* at 14:4-22, 99:5-100:21.) On one such occasion in March 2000, Jackson-Gilmore went to the police station to review the documentation on her dispute with Thomas. (*Id.* at 99:7-100:3.) When she approached Dickson for help, he responded by allegedly threatening her in the face with a balled up fist. (*Id.* at 99:6-100:21.) Jackson-Gilmore then asked for help from the NAACP, which advised her not to return to the police station. (*Id.* at 100:22-101:2.) She then attempted to file a criminal complaint against "Officer Patterson" on March 20, 2000 but that was also not accepted. (*Id.* at 20:11-24.) Soon after, Dickson allegedly drove past her home, and "made a comment like, I told you that nothing would be done." (*Id.* at 21:20-21:5.)

On June 25, 2002, Dickson again came to plaintiff's door with his badge in his hand. (*Id.* at 144:1-5.) This time, Jackson-Gilmore asked for Dickson's name and he truthfully responded that his name was Dickson. (*Id.* at 144:1-15.) Given that Covert told plaintiff that Dickson's name was Patterson, Jackson-Gilmore believed Dickson was lying. (*Id.*) According to Jackson-Gilmore, Dickson then wrongfully accused her of throwing white paint on Thomas's car. (*Id.* at 28:5-13.) When Jackson-Gilmore replied that she did not know what he was talking about, Dickson allegedly became infuriated, stating that he was tired of her "BS," and that: "you was trash you moved here and you brought the neighborhood down. . . . You better tell me why did you do that. And if you tell me . . . I'm going to lock you up." (*Id.* at 28:12-24.) When Jackson-Gilmore again denied any involvement, Dickson stated, "Stop playing games with me, you know what you did . . . people saw you do it . . . I saw you do it. . . I'mma (sic) take your black ass to jail." (*Id.* at 28:24-29:11.)

The events in this case culminated on August 12, 2002, when several police officers arrived at Jackson-Gilmore's home to serve a warrant taken out by Thomas. (Compl. ¶ 11.) The officers allegedly would not provide Jackson-Gilmore with identification or tell her the purpose of their visit. (Jackson-Gilmore Dep. at 43:1-19.) When she asked if they had a warrant, one officer took a tissue out of his pocket and held it up to her, laughed, and asked her if she could read it. (*Id.* at 43:11-19.) At that point, Jackson-Gilmore went to check the back of her house and saw Dickson run across the grass and enter Thomas's residence through the back door. (*Id.* at 45:1-8.) Meanwhile, the police began to break down Jackson-Gilmore's front door. (*Id.* at 45:9-23.) They entered her house, grabbed her by the neck, lifted her up, and carried her out of her house. (*Id.* at 46:15-24.) Officer Dickson was on the front steps of Thomas's residence, and joined the other

officers in dragging Jackson-Gilmore out onto the front lawn. (*Id.*) After the officers handcuffed her and began pulling her toward the police car, Jackson-Gilmore yelled for her son to call her mother. (*Id.* at 47:8-18.) Dickson then began screaming at her to shut up, that it was her fault "it took so damn long." (*Id.* at 47:22-48:3.) Despite this, Jackson-Gilmore continued to call to her son. (*Id.* at 47:7-9.) Dickson violently reacted, punching her in the back of the head multiple times and slamming her head into the police car door, despite the fact that plaintiff offered no resistence. (*Id.* at 48:10-17.) Jackson-Gilmore was then taken to Darby Township District Court where she was fingerprinted, photographed, and charged with recklessly endangering another person, harassment, stalking, and criminal mischief. (Compl. ¶ 15.) After being released, she was allegedly treated for multiple physical injuries as a result of the arrest, as well as for emotional trauma. (Jackson-Gilmore Dep. 69-81.) Jackson-Gilmore was found not guilty of all charges on February 14, 2003. *Commonwealth v. Gilmore*, No. 5550-02 (Del. Ct. Com. Pl. Feb. 14, 2003).

II. PROCEDURAL BACKGROUND

Jackson-Gilmore filed a complaint against Thomas and Dickson on August 6, 2004. (Compl. 5-11.) The complaint included seven counts and alleged that: Dickson violated 42 U.S.C. §§ 1983 and 1985(3) by using unreasonable force during plaintiff's arrest (Count I); Dickson violated 42 U.S.C. §§ 1983 and 1985(3) by abusing his authority, harassing plaintiff, and retaliating against her (Count II);[4] Dickson and Thomas conspired to commit these acts, also in violation of §§1983 and 1985(3) (Count III); defendants committed intentional torts under Philadelphia and Pennsylvania law (Count IV); and Dickson committed tortious assault and battery during plaintiff's arrest (Count V). Plaintiff argued for the recovery of punitive damages

[4]Because neither defendant has raised an issue as to the viability of such a claim, the court will assume that such a claim exists for the purposes of this motion.

and attorney's fees in Counts VI and VII, respectively. In addition, plaintiff sought compensatory damages in excess of $100,000.

On October 6, 2004, Thomas answered the complaint and Dickson filed a motion to dismiss and a motion to strike under Fed. R. Civ. P. 12(b)(6) and 12(f), respectfully. After receiving plaintiff's response to Dickson's motion, the court dismissed Counts IV, VI, and VII without prejudice on November 1, 2004. Dickson answered the complaint on November 10, 2004. On June 24, 2005, defendants filed the pending motion for summary judgment, to which plaintiff responded on July 8.

III. STANDARD OF REVIEW

Either party to a lawsuit may file a motion for summary judgment, and it will be granted only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. Pro. 56(c). The moving party bears the initial burden of showing that there is no genuine issue of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the moving party has met its initial burden, the nonmoving party must present "specific facts showing that there is a genuine issue for trial." *Matsushita*, 475 U.S. at 586 n.10. "Facts that could alter the outcome are 'material,' and disputes are 'genuine' if evidence exists from which a rational person could conclude that the position of the person with the burden of proof on the disputed issue is correct." *Ideal Dairy Farms, Inc. v. John Lebatt, Ltd.* 90 F.3d 737, 743 (3d Cir. 1996) (citation omitted). The non-movant must present concrete evidence supporting each essential element of its claim. *Celotex*, 477 U.S. at 322-23.

When a court evaluates a motion for summary judgment, "[t]he evidence of the non-

movant is to be believed." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Furthermore, "[a]ll justifiable inferences are to be drawn in [the non-movant's] favor." *Id.* "Summary judgment may not be granted . . . if there is a disagreement over what inferences can be reasonably drawn from the facts even if the facts are undisputed." *Ideal Dairy*, 90 F.3d at 744 (citation omitted). However, "an inference based upon a speculation or conjecture does not create a material factual dispute sufficient to defeat entry of summary judgment." *Robertson v. Allied Signal, Inc.*, 914 F.2d 360, 382 n.12 (3d Cir. 1990). The non-movant must show more than "[t]he mere existence of a scintilla of evidence" for elements on which he bears the burden of production. *Anderson*, 477 U.S. at 252. Thus, "[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" *Matsushita*, 475 U.S. at 587 (citations omitted).

IV. DISCUSSION

Jackson-Gilmore alleges deprivations of federal rights under 42 U.S.C. §§ 1983 and 1985(3), in addition to claims brought pursuant to Pennsylvania law. Essentially, Jackson-Gilmore seeks to hold Dickson liable for unreasonable use of force, abuse of authority, harassment, and retaliation under § 1983, and assault and battery under state law. She also wishes to hold both Dickson and Thomas liable for conspiracy to violate her civil rights under §§ 1983 and 1985(3).

In response to Jackson-Gilmore's assertions, defendants raise multiple issues in their motions for summary judgment. Dickson contends that summary judgment is warranted on plaintiff's abuse of authority, harassment, retaliation, and conspiracy claims because the statute of limitations bars claims based on conduct occurring prior to August 6, 2002. Dickson also argues

that all § 1983 claims must fail because Jackson-Gilmore's evidence does not establish Dickson was acting "under the color of law" when he allegedly threatened her on several occasions. With regard to the conspiracy claims, Thomas asserts that plaintiff has provided insufficient evidence to prove the elements of either a § 1983 or § 1985(3) conspiracy. Dickson also argues the latter point and concludes that because none of the federal claims survives summary judgment, the court should also dismiss the state claims.

I will address the statute of limitations argument first, followed by the specific § 1983 and § 1985(3) claims, respectively. Last, I will deal with the state law claims, because the court's exercise of supplemental jurisdiction over Jackson-Gilmore's pendent claims will hinge on the viability of the federal actions before the court.

A. Statute of Limitations for § 1983 and § 1985(3) Claims

Jackson-Gilmore's claims in Counts II and III, including abuse of authority, harassment, retaliation, and conspiracy in violation of § 1983 and § 1985(3), stem from events occurring between December 28, 1999 and August 12, 2002. Dickson argues that the court should dismiss these counts because the two-year statute of limitations bars claims based on events occurring prior to August 6, 2002.[5] (Dickson Mot. for Summ. J. 8.) Plaintiff responds that Dickson is estopped from asserting the statute of limitations defense because he and the Darby Township

[5]Dickson argues that the two-year statute of limitations bars claims based on events occurring prior to August 6, 2002 because plaintiff filed her complaint on August 6, 2004. As a preliminary note, even if I found that the statute of limitations has expired for pre-August 6, 2002 conduct, Counts II and III are also based on events occurring after August 6, 2002, including plaintiff's arrest on August 12, 2002. (Compl. ¶¶ 22, 24, & 28.) Thus, these counts still contain timely claims and, contrary to Dickson's assertions, could not be dismissed on the statute of limitations alone.

Police Department took steps to fraudulently conceal Dickson's identity.[6] (Pl. Resp. to Dickson Mot. 11-12.) While the statute of limitations has expired, the court agrees with Jackson-Gilmore to the extent that genuine issues of material fact exist as to (1) whether Dickson fraudulently concealed his identity, and (2) if so, whether the statute of limitations is tolled until after August 6, 2002. Accordingly, Dickson is not entitled to summary judgment on the statute of limitations issue.

1. Accrual and Expiration of the Statute of Limitations

The statute of limitations for asserting claims based on Dickson's pre-August 6, 2002 conduct has accrued and expired. It is well established that for all claims brought under § 1983 and § 1985(3), federal courts apply the state's statute of limitations for personal injury actions. 42 U.S.C. § 1988 (2005); *Wilson v. Garcia*, 471 U.S. 261, 276 (1985); *Sameric Corp. of Delaware, Inc. v. City of Philadelphia*, 142 F.3d 582, 599-600 (3d Cir. 1998); *Pratt v. Thorburgh*, 807 F.2d 355, 357 (3d Cir. 1986). Pennsylvania's two-year statute of limitations for personal injury actions, 42 Pa. C.S. § 5524, therefore governs Jackson-Gilmore's claims under §§ 1983 and 1985. *Lake v. Arnold*, 232 F.3d 360, 268 (3d Cir. 2000).

This limitation period began to run when Jackson-Gilmore's causes of action accrued. *See Oshiver v. Levin, Fishbein, Sedran & Berman*, 38 F.3d 1380, 1386 (3d Cir. 1994). Federal law governs the accrual of § 1983 and § 1985 claims, *Montgomery v. DeSimone*, 159 F.3d 120, 126 (3d Cir. 1998), and "the limitations period begins to run from the time when the plaintiff knows or has reason to know of the injury which is the basis" for the action. *Genty v. Resolution Trust Corp.*, 937 F.2d 899, 919 (3d Cir. 1991) (citing *Deary v. Three Un-Named Police Officers*, 746

[6] Dickson did not respond to Jackson-Gilmore's fraudulent concealment argument.

F.2d 185, 197, n.16 (3rd Cir. 1984)). In this case, both Count II, abuse of authority, and Count III, conspiracy, allege multiple occasions on which defendants have allegedly infringed on plaintiff's civil rights. With regard to Count II, a cause of action accrues separately for each alleged abuse, because as of the time of each incident, Jackson-Gilmore had reason to know of the injuries forming the basis of her suit. *Id.* Thus, the limitation period runs separately from each alleged injury. Likewise, the filing deadline for Jackson-Gilmore's Count III conspiracy claim "runs from each overt act causing damage." *Wells v. Rockefeller*, 728 F.2d 209, 217 (3d Cir. 1984); *Kost v. Kozakiewicz*, 1 F.3d 176, 191 (3d Cir. 1993). Therefore, because Jackson-Gilmore filed her complaint on August 6, 2004, the two-year statute of limitations has expired for any claims arising out of events that occurred prior to August 6, 2002.

2. Tolling of the Statute of Limitations

As the statute of limitations has accrued and expired for claims based on acts occurring prior to August 6, 2002, the court is barred from considering those claims unless the statute of limitations has been tolled. State tolling rules govern federal actions brought under §§ 1983 and 1985(3), unless they are "inconsistent with the federal policy underlying the cause of action under consideration." *Board of Regents v. Tomanio*, 446 U.S. 478, 485 (1980); *Lake*, 232 F.3d at 369-70. *See also* 42 U.S.C. § 1988 (requiring federal courts to use the forum state's statute of limitations unless its application would conflict with the Constitution or with federal law).

Jackson-Gilmore argues that Pennsylvania's doctrine of fraudulent concealment serves to toll the statute of limitations. Based on the theory of estoppel, this doctrine provides that a defendant may not invoke the statute of limitations when, through fraud or concealment, he causes the plaintiff to relax her vigilance or deviate from her right of inquiry. *Fine v. Checcio*, 870 A.2d

850, 860 (Pa. 2005); *Molineux v. Reed*, 532 A.2d 792, 795 (Pa. 1987). If a plaintiff establishes that fraudulent concealment occurred, "the statute [of limitations] is tolled until the plaintiff[] knew or using reasonable diligence should have known of the claim." *Vernau v. Vic's Market, Inc.*, 896 F.2d 43, 45 (3d Cir. 1990) (quoting *Urland v. Merrell-Dow Pharmaceuticals, Inc.*, 822 F.2d 1268, 1272 (3d Cir. 1987)); *Fine*, 870 A.2d at 861. I will now examine each of these requirements in turn.

a. Fraudulent Concealment

In order to prove fraudulent concealment, Jackson-Gilmore must demonstrate, by clear and convincing evidence, *Molineux*, 532 A.2d at 794, that Dickson has engaged in "an affirmative or independent act of concealment that would divert or mislead the plaintiff from discovering the injury" or its cause. *In re TMI*, 89 F.3d 1106, 1117-118 (3d Cir.1996) (quoting *Bohus v. Beloff*, 950 F.2d 919, 925 (3d Cir. 1991)). Fraudulent concealment may be either intentional or unintentional, *Nesbitt v. Erie Coach Co.*, 204 A.2d 473, 476 (Pa. 1964); however, a "mere mistake, misunderstanding, or lack of knowledge is insufficient." *Schaffer v. Larzelere*, 189 A.2d 267, 269 (Pa. 1963). In a case where a defendant or his affiliates actively misleads the plaintiff as to the identity of the proper defendants, as is alleged here, the court may toll the statutory period. *Ciccarelli v. Carey Can. Mines, Ltd.*, 757 F.2d 548, 556 (3d Cir. 1985); *Wawrzynek v. Statprobe, Inc.*, 2005 U.S. Dist. LEXIS 19283, *8 (E.D. Pa. Sept. 2, 2005); *Calle v. York Hospital*, 232 F. Supp. 2d 353, 361 (M.D. Pa. 2002) (citing *McDowell v. Raymond Industrial Equipment, Ltd.*, 2001 U.S. Dist. LEXIS 1142, *5 (E.D. Pa. Feb. 6, 2001)); *Hubert v. Greenwald*, 743 A.2d 977, 981 (Pa. Super. Ct. 1999).

When a plaintiff raises the issue of fraudulent concealment, "it is for the jury to say whether the remarks that are alleged to constitute the fraud or concealment were made," before a

court may determine whether an estoppel results from the established facts. *Fine*, 870 A.2d at 860 (citing *Nesbitt*, 204 A.2d at 476). Therefore, when a plaintiff raises fraudulent concealment on summary judgment, a court must determine if a genuine issue of material fact exists as to whether the defendant's actions caused the plaintiff to relax her vigilance or deviate from inquiring into the facts. *Id.* at 863. As stated above, a genuine issue of material fact exists only when "a reasonable trier of fact, viewing all of the evidence, could rationally find in favor of the nonmoving party" in light of the nonmover's burden of proof, in this case, by clear and convincing evidence. *United States v. Premises Known as RR #1*, 14 F.3d 864, 870 (3d Cir. 1994). The "clear and convincing evidence standard requires evidence that is 'so clear, direct, weighty, and convincing as to enable the [fact-finder] to come to a clear conviction, without hesitancy, of the truth of the precise facts of the issue.'" *Rohm & Haas Co. v. Continental Casualty Co.*, 781 A.2d 1172, 1179 (Pa. 2001) (quoting *Lessner v. Rubinson*, 592 A.2d 678, 681 (Pa. 1991)).

In this case, the court concludes that summary judgment is not appropriate on the fraudulent concealment issue. Drawing all justifiable inferences in favor of Jackson-Gilmore, a rational person could conclude that the interactions between Dickson, the police department, and Jackson-Gilmore demonstrate, by clear and convincing evidence, intentional concealment by Dickson and, at the very least, unintentional misleading by the police department. First, Jackson-Gilmore presents evidence that Dickson purposefully concealed his identity on multiple occasions, by removing his badge and keeping it in his hand, when he went to Jackson-Gilmore's house. (Pl.'s Resp. to Dickson's Rule 56(c) Motion 13; Jackson-Gilmore Dep. 6:1-5 & 144:1-5, May 17, 2005.) Her evidence also asserts that despite several attempts at determining Officer Dickson's identity, plaintiff received little help from the police, and when she did, she received

erroneous information. (Jackson-Gilmore Dep. at 10:1-13:17, 15:6-16:18, & 20:11-24.) For example, Police Chief Thompson allegedly did not respond to plaintiff's inquiries and her neighbor, police official Andrew Covert, erroneously identified the officer as Officer Patterson, the son of Commissioner Lawrence Patterson. (*Id.* at 20:1-8.) Moreover, plaintiff presents evidence that in March 2002, Dickson mocked her attempts to file a complaint against him: when the district attorney did not accept plaintiff's private criminal complaint, Dickson purportedly drove past her home, and "made a comment like, I told you that nothing would be done." (*Id.* at 20:11-24, 21:20-22:5.) Finally, while Jackson-Gilmore testified that Dickson revealed his name to her on June 25, 2002,[7] this admission does not render her fraudulent concealment argument moot. As the court must draw all inferences in the non-movant's favor, the evidence suggests a reasonable person could still conclude that prior to June 25, 2002 Dickson deterred, and now was continuing to deter, plaintiff's investigation into his identity. Jackson-Gilmore states that while Dickson was telling her his name, he simultaneously concealed his badge in his hand. A fact-finder could reasonably believe this action was purposely done to prevent Jackson-Gilmore from knowing if Dickson was lying. In short, Jackson-Gilmore has presented a genuine issue of material fact on the fraudulent concealment issue: her evidence is direct and weighty enough, if believed, to convince a fact-finder that Dickson and the police department engaged in affirmative or independent acts of concealment that would divert or mislead Jackson-Gilmore from discovering Dickson's identity. A jury must consequently determine whether or not the actions

[7]On that date, Jackson-Gilmore states that Dickson came to her door, concealing his badge. (*Id.* at 144:1-5.) Plaintiff recounts that she demanded his name, and Officer Dickson truthfully responded that his name was Dickson. (*Id.* at 144:1-11.) Given her past history with defendant, plaintiff believed he was lying. (*Id.* at 144:9-15.)

alleged to be fraudulent concealment occurred.

b. Reasonable Diligence

However, even if a jury were to find fraudulent concealment, the statute of limitations is not tolled indefinitely. Rather, **the statutory period begins to run when the plaintiff, acting with reasonable diligence, should have known of her injury and its cause.** *Fine*, 870 A.2d at 861. Thus, Jackson-Gilmore must prove that a reasonably diligent person would not have known Dickson's identity until after August 6, 2002, consequently tolling the statute of limitations until after that date. Otherwise, the two-year statute of limitations on many of her Count II and III claims would have expired prior to her August 6, 2004 complaint.

The reasonable diligence standard applies to plaintiffs alleging fraudulent concealment. *Id.* While the reasonable diligence standard is not absolute, a party is expected to make "a reasonable effort to discover the cause of an injury under the facts and circumstances present in the case." *Crouse v. Cyclops Industries*, 745 A.2d 606, 611 (Pa. 2000). "The question in any given case is not, what did the plaintiff know of the injury done to him? But what might he had known, by the use of the means of information within his reach, with the vigilance the law requires of him?" *Fine*, 870 A.2d at 858 (citing *Scranton Gas & Water Co. v. Lackawanna Iron & Coal Co.*, 31 A. 484, 485 (Pa. 1895)). The party is expected to act with **"those qualities of attention, knowledge, intelligence and judgment which society requires of its members for the protection of their own interest and the interest of others."** *Id.* While this test is an objective one, it is also flexible enough "to take into account the differences between persons and their capacity to meet certain situations and the circumstances confronting them at the time in question." *Crouse*, 745 A.2d at 611 (citing *Burnside v. Abbott Laboratories*, 505 A.2d 973, 988 (Pa. Super. 1985)). **In other words, "a party is not under an absolute duty to discover the cause of his injury.**

Instead, he must exercise only the level of diligence that a reasonable man would employ under the facts and circumstances presented in a particular case." *Id.* (citing *Cochran v. GAF Corp.*, 542 Pa. 210, 217, 666 A.2d 245, 249 (1995)).

Under Pennsylvania law, the "question of when reasonable diligence would have made the injury and its cause known to a party is a matter for determination by the jury." *Wawrzynek v. Statprobe, Inc.*, 2005 U.S. Dist. LEXIS 19283, *12 (E.D. Pa. Sept. 2, 2005) (citing *Fine*, 870 A.2d at 861, and *Cochran*, 666 A.2d at 248). Therefore, on summary judgment, Jackson-Gilmore must demonstrate that a genuine issue of material fact exists as to whether a reasonably diligent person would not have known of Dickson's identity until after August 6, 2002, effectively tolling the statute of limitations. If a factual dispute exists regarding when a reasonably diligent person would have known of the injury and its cause, summary judgment is not appropriate. *Vitale v. Buckingham Manufacturing Co.*, 2005 U.S. Dist. LEXIS 13628, *4 (E.D. Pa. July 7, 2005) (citing *Fine*, 870 A.2d at 859).

Based on the record currently before it, the court determines that a genuine issue of material fact exists as to whether the statute of limitations is tolled until after August 6, 2002. Viewing the evidence in the light most favorable to Jackson-Gilmore, the record contains more than a mere "scintilla of evidence" that could lead a jury to find in her favor, i.e., that Jackson-Gilmore, exercising appropriate diligence, reasonably did not know of Dickson's identity until after August 6, 2002.

Jackson-Gilmore presents evidence that despite making diligent efforts to discover Dickson's identity, she did not reasonably learn of Dickson's true identity until near her February 2003 trial. As a general matter, plaintiff documented all her interactions with Dickson. (Jackson-Gilmore Dep. 14:4-22.) In addition, she presents evidence that she continuously gave these

documents to the police, as well as attempted to get more information from them in person, consistently from December 1999 to March 2000. According to her deposition testimony, these efforts were of little avail. In March 2000, Jackson-Gilmore testified she attempted to file a criminal complaint against Officer Patterson, but that was also not accepted. (*Id.* at 20:11-24.) As stated above, Officer Dickson allegedly drove by plaintiff's home and mocked these attempts to hold him accountable. (*Id.* at 21:20-21:5.)

In addition to seeking information from the police, plaintiff provides evidence that she also went to local community leaders and groups about these incidents, including to the offices of her state representative and the NAACP. (*E.g.*, *id.* at 110:14-24; 116:21-117:17; 145:21-147:4.) After being allegedly threatened by Dickson in March 2000, Jackson-Gilmore testified the representative at the NAACP told her to stop going to the police station. (*Id.* at 100:4-101:2.) She heeded this advice, and recalls only providing further documentation on her interactions with Dickson to community groups, including on June 25, 2002, after Dickson allegedly threatened her about Thomas's car, and on January 13, 2003, after her arrest. (*Id.* at 139:20-140:12; 145:21-147:4; Ex. 8.) Jackson-Gilmore also claims she took pictures of Officer Dickson and the car he was driving, and gave all this information to her attorney at the time of her trial in February 2003. (*Id.* at 145:2-10.) I conclude that these efforts by Jackson-Gilmore could suggest to a fact-finder that Jackson-Gilmore reasonably did not know Dickson's name until after August 6, 2002.

In addition, while Dickson's June 2002 disclosure of his true name seriously undermines Jackson-Gilmore's argument that she reasonably did not know of his true identity until after August 6, 2002, it is not fatal on summary judgment. Taken in conjunction with Dickson's other alleged acts of subterfuge, a rational person could still believe Jackson-Gilmore had every reason

to doubt Dickson's statement in June 2002. Because the court must assume all facts in favor of the non-moving party, I conclude that a jury could still believe that Jackson-Gilmore exercised the requisite level of diligence, and reasonably did not know his name, until after August 6, 2002.

Given that the evidence enumerated in the record thus far presents genuine issues of material fact as to both fraudulent concealment and reasonable diligence, and that the defendants did not respond to Jackson-Gilmore's tolling arguments, the court determines summary judgment is inappropriate at this time. Because the parties dispute many of the alleged events in this case,[8] a jury must determine the parties' actual actions to resolve the fraudulent concealment issue, and consequently, whether the statute of limitations has expired.

B. Section 1983 Claims: Under "Color of Law"

The court now turns to the specific § 1893 claims disputed by Dickson in this case. In her complaint, plaintiff asserts that defendants' actions give rise to several § 1983 claims for violating her "right to be free from threats, intimidation, harassment, and retaliatory conduct as guaranteed by the Fourth and Fourteenth Amendments." (Compl. ¶ 29.) Section 1983 is not a source of rights but rather permits a cause of action for the violation of other federal rights.[9] *See Graham v. Connor*, 490 U.S. 386, 393-94 (1989); *Alexander v. Whitman*, 114 F.3d 1392, 1400 (3d Cir.

[8]While Dickson did not respond to the fraudulent concealment argument in Jackson-Gilmore's response to Dickson's motion for summary judgment, Dickson does generally dispute many of the events underlying her claims.

[9] Section 1983 states, in pertinent part, "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." 42 U.S.C. § 1983.

1997). In order to recover under § 1983, Jackson-Gilmore must establish that Dickson, (1) while acting under color of state law, (2) deprived her of rights, privileges, or immunities secured by the Constitution or laws of the United States.[10] *Mark v. Borough of Hatboro*, 51 F.3d 1137, 1141 (3d Cir. 1995). Dickson argues that Jackson-Gilmore's claims under Counts I, II, and III should be dismissed because her evidence fails to establish that Dickson was acting under color of law on two occasions, December 28, 1999 and June 25, 2002, when Dickson purportedly arrived at her home and either harassed or threatened her. The court disagrees.

In order to gain redress under § 1983, Jackson-Gilmore must show that Dickson, as a police officer, was acting under the color of state law when he committed the alleged violations of her constitutional rights. *Id.* Traditionally, "acting under color of state law requires that the defendant in a § 1983 action have exercised power 'possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.'" *West v. Atkins*, 487 U.S. 42, 49 (1988) (quoting *United States v. Classic*, 313 U.S. 299, 326 (1941)). "Accordingly, acts of a state or local employee in [his] official capacity will generally be found to have occurred under color of state law," regardless of whether his actions are in furtherance of state goals or constitute an abuse of power. *Barna v. City of Perth Amboy*, 42 F.3d 809, 816 (3d Cir. 1994). Likewise, a police officer will be found to act under color of law if (1) he depends upon the "cloak of the state's authority" as a means to commit the alleged improper acts, and (2) that authority enables the officer to do what he did. *Barna*, 42 F.3d at 815-16, 818; *Pryer v. City of Philadelphia*, 2004 U.S. Dist. LEXIS 5331, *11 (E.D. Pa. Feb. 19, 2004); *Johnson v. Hackett*,

[10]Neither defendant argues that plaintiff has failed to allege a deprivation of federally protected rights.

284 F. Supp. 933, 937 (E.D. Pa. 1968). This rule applies regardless of whether a police officer is on or off-duty. *Barna*, 42 F.3d at 816.

However, "a police officer's purely private acts which are not furthered by any actual or purported state authority are not acts under color of state law." *Barna*, 42 F.3d at 816-817 (citing *Delcambre v. Delcambre*, 635 F.2d 407, 408 (5th Cir. 1981)). While courts do consider an officer's motivation in making this determination, an officer's actions are purely private when he becomes involved in a dispute "without any evidence of police actions calculated to preserve the peace, protect life or property, arrest violators of the law or prevent crime." *Nonnemaker v. Ransom*, 1999 U.S. Dist. LEXIS 8108, *3 (E.D. Pa. May 26, 1999).[11] But, even if actions are motivated by personal animosity, this fact "does not and cannot place an officer or his acts outside the scope of section 1983 if he vented his ill feeling towards [the victim] . . . all under color of a policeman's badge." *Basista v. Weir*, 340 F.2d 74, 80-81 (3d Cir. 1965). Thus, the "acts of

[11]*See, e.g.*, *Pryer*, 2004 U.S. Dist. LEXIS 55331 at * 15-16 (off-duty officer was not acting under color of state law when the underlying nature of the incident was personal and the officer was in plainclothes, was driving his own car, and never gave any indication he was on official business); *Smith v. City of Philadelphia*, 2002 U.S. Dist. LEXIS 26529, *10 (E.D. Pa. Sept. 23, 2002 (officer who attacked a man who he knew was romantically involved with his girlfriend did not act under color of law where victim did not know his attacker was an officer and where officer did not identify himself as an officer, utilize his employment as a law enforcement officer to exercise authority, or direct compliance with the law); *Halwani v. Galli*, 2000 U.S. Dist. LEXIS 9684,*3 (E.D. Pa. July 13, 2000) (on-duty, uniformed police officer did not act under color of law because the altercation arose out of a personal dispute and the officer did not arrest or threaten to arrest the plaintiff); *Hunte v. Darby Borough*, 897 F. Supp. 839, 841 (E.D. Pa. 1995) (off-duty officer who allegedly assaulted two individuals did not act under color of law because he was not in uniform, did not display a police badge, did not identify himself as a police officer and did not attempt arrest); *Strohm v. Shanahan*, 1994 U.S. Dist. LEXIS 8868, *2-3 (E.D. Pa. Jun. 30, 1994) (off-duty officer did not exercise state authority when he allegedly grabbed plaintiff, struck him from behind, and then threatened to beat and arrest him because witnesses to the incident regarded the defendant officer as an intoxicated patron engaged in a personal dispute rather than as a police officer exercising state authority).

officers in the ambit of their personal pursuits are plainly excluded [whereas] acts of officers who undertake to perform their official duties are included whether they hew to the line of their authority or overstep it." *Screws v. United States*, 325 U.S. 91, 111 (1945); *Mark v. Borough of Hatboro*, 51 F.3d 1137, 1141 (3d Cir. 1995).

To determine if an officer was depending upon the "cloak of the state's authority" to commit the alleged acts, courts ask whether the officer's actions are consistent with actions generally taken by a police officer. *See Griffin v. Maryland*, 378 U.S, 130, 135 (1964); *Barna*, 42 F.3d at 816; *Nonnemaker v. Ransom*, 1999 U.S. Dist. LEXIS 8108, at *3 (E.D. Pa. 1999). Courts look to all of the officer's acts, and to no one act in particular, in context, to determine whether an officer was acting in his official capacity and whether the officer invoked police authority. *Barna*, 42 F.3d at 818. Manifestations of police authority may include flashing a police badge, identifying oneself as a police officer, indicating that the officer is on official police business, attempting to make an arrest or placing an individual under arrest, or intervening in a dispute involving others pursuant to a duty imposed by police department regulations. *Barna*, 42 F.3d at 816.

In addition to possessing or purporting to act with state authority, this authority must enable the officer to do what he did. Both the Supreme Court and the Third Circuit have indicated that the appropriate analysis is whether the indicia of authority enabled the officer to commit the alleged act. The Supreme Court has stated that action pursued under color of law is "the misuse of power . . . made possible *only because* the wrongdoer is clothed with the authority of state law." *Classic*, 3134 U.S. at 326 (emphasis added). Similarly, the Third Circuit has made clear that when a police officer becomes involved in his own personal disputes, the "officer's purely

private acts which are *not furthered* by any actual or purposed state authority are not acts under the color of state law." *Barna*, 42 F.3d at 816-17 (emphasis added); *Pryer*, 2004 U.S. Dist. LEXIS 5331, at * 21. Thus, the controlling inquiry is not simply whether the officer used police authority, but whether a police officer's private acts were furthered by his purported state authority.

Although Jackson-Gilmore does allege that Dickson acted out of personal reasons because of some undefined relationship with Thomas, this fact does not place him outside the scope of § 1983 "if he vented his ill feeling towards [the victim] . . . all under color of a policeman's badge." *Basista*, 340 F.2d at 80-81. Drawing all justifiable inferences in plaintiff's favor, I conclude that the evidence could lead a reasonable fact-finder to find that Dickson acted under color of state law.

With regard to the December 28, 1999 incident, a reasonable person could view Dickson's actions and statements as consistent with those of a police officer performing his official duties. In addition to arriving in a police car and being dressed in his police uniform, Dickson allegedly made several statements to Jackson-Gilmore indicating he was acting with police authority. (Jackson-Gilmore Dep. 5:19 & 6:3-16.) These comments include his statement that he was responding to a neighbor's complaint (*Id.* at 5:10-16), a statement from which one could reasonably infer that he was on official business. Furthermore, when Jackson-Gilmore refused to give him her last name and stated she would go to the police station herself, Dickson allegedly stated "When you go to the police station, they're not going to cooperate with you because you're not cooperating with me." (*Id.* at 7:15-20.) Dickson also stated that there would be "repercussions" if Jackson-Gilmore did not leave Thomas alone. (*Id.* at 5:10-16.) Believing these

facts, as the court must on summary judgment, it is reasonable to infer that Dickson was not only using police authority, but through that authority, also furthering his alleged goal of harassing Jackson-Gilmore.

In addition, Dickson's purported actions on June 25, 2002 would strongly suggest to a reasonable fact-finder that he was acting under state authority. Dickson himself admits in his own deposition that he was there to officially investigate Thomas's complaint, and that if there had been probable cause, he would have arrested Jackson-Gilmore. (Scott Dickson Dep. 10:13-19, May 17, 2005.) Jackson-Gilmore also testified that Dickson made several statements that invoked his police authority, including, "I'm going to lock you up," (Jackson-Gilmore Dep. 29:19-20) and "Open the door . . . I'mma [sic] take your black ass to jail." (*Id.* at 29:6-8.) Like the statements above, a reasonable person may view these statements as invoking police authority to further Dickson's private goals. While the parties may disagree about the inferences that can be drawn from the facts, "summary judgment may not be granted . . . if there is a disagreement over what inferences can be reasonably drawn from the facts." *Ideal Dairy*, 90 F.3d at 744 (citation omitted). Thus, Dickson's motion for summary judgment, on the "under color of law" issue, will be denied.

C. Conspiracy Claims Under §§ 1983 and 1985(3)

In addition to the § 1983 unreasonable use of force, abuse of authority, harassment, and retaliation claims against Dickson, plaintiff also alleges that both Dickson and Thomas conspired to violate her Fourth and Fourteenth Amendment rights under §§ 1983 and 1985(3). Defendants move for summary judgment on these claims, with Thomas arguing that Jackson-Gilmore has failed to provide evidence demonstrating the existence of a § 1983 conspiracy, and both

defendants arguing that she has failed to show a conspiracy with discriminatory animus under § 1985(3). While I will deny Thomas's summary judgment motion with regard to the § 1983 claim, I will grant both defendants' motions with regard to the § 1985(3) conspiracy claim.

1. Conspiracy Claims Brought Pursuant to § 1983

As is alleged in the present case, state actors and private parties who jointly conspire to deprive others of their constitutional rights are subject to liability under § 1983. *Dennis v. Sparks*, 449 U.S. 24, 27-28 (1980) (private parties are also acting "under color" of state law when they conspire with state officials to deprive others of constitutional rights) (citing *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 152 (1970); *United States v. Price*, 383 U.S. 787, 794 (1966)). In order to establish a civil conspiracy under § 1983, plaintiff must demonstrate "(1) the existence of a conspiracy and (2) a deprivation of civil rights in furtherance of the conspiracy by a party to the conspiracy." *Victory Outreach Center v. Melso*, 371 F. Supp. 2d 642, 647 (E.D. Pa. 2004). *See also Adickes*, 398 U.S. at 150-52; *Parkway Garage, Inc. v. City of Philadelphia*, 5 F.3d 685, 700 (3d Cir. 1993). Defendant Thomas argues that plaintiff has provided insufficient evidence of a conspiracy to survive her motion for summary judgment. The court disagrees.

A conspiracy is a "combination of two or more persons acting in concert to commit an unlawful or criminal act or to do a lawful act by unlawful means or for an unlawful purpose." *Ammlung v. City of Chester*, 494 F.2d 811, 814 (3d Cir. 1974) (citing *Landau v. Western Pennsylvania National Bank*, 445 Pa. 217, 244 (1971)). The principal element of a conspiracy is an agreement between the parties "to inflict a wrong against or injury upon another," and commit "an overt act that results in damage." *Adams v. Teamsters Local 115*, 2003 U.S. Dist. LEXIS 15477, *23 (E.D. Pa. Aug. 6, 2003) (quoting *Hampton v. Hanrahan*, 600 F.2d 600, 620-21 (7th

Cir. 1979), *rev'd in part on other grounds*, 446 U.S. 754 (1980)). Therefore, "it is not enough that the end result of the parties' independent conduct caused plaintiff harm or even that the alleged perpetrators of the harm acted in conscious parallelism." *Fullman v. Philadelphia International Airport*, 49 F. Supp. 2d 434, 444 (E.D. Pa. 1999) (quoting *Spencer v. Steinman*, 968 F. Supp. 1011, 1020 (E.D. Pa. 1997)). Rather, the alleged conspirators must have had a "meeting of the minds" and "reached an understanding to achieve the conspiracy's objectives." *Fisher v. Borough of Doylestown*, 2003 U.S. Dist. LEXIS 23943, *9 (E.D. Pa. Dec. 10, 2003) (quoting *Adickes*, 298 U.S. at 158).

A plaintiff may present evidence of a conspiracy agreement by either direct or circumstantial evidence. *See* ***Ball v. Paramount Pictures***, 169 F.2d 317, 319 (3d Cir. 1948) (holding that while conspiracy may be proven by direct evidence, it can also be "inferred when the concert of action 'could not possibly be sheer coincidence'"). A plaintiff will not survive summary judgment if she bases her claims solely on suspicion and speculation. *Anderson*, 744 U.S. at 256 (rejecting the view that a plaintiff could defeat a defendant's properly supported summary judgment motion without offering "any significant probative evidence tending to support the complaint"); *Morris v. Orman*, 1989 U.S. Dist. LEXIS, 1876, *34 (E.D. Pa. Mar. 1, 1989) (stating that where defendants "have denied existence of any conspiracy, plaintiff must produce evidence of record, not speculative theories, to survive motion for summary judgment"). However, so long as there is a possibility that a jury could infer from the circumstances that the co-conspirators had a meeting of the minds and reached an understanding to achieve their objectives, the question of whether an agreement exists is for a jury to decide. ***Fisher***, 2003 U.S. Dist. LEXIS 23943 at *8-9 (quoting *Adickes*, 298 U.S. at 158); *Victory*, 371 F. Supp. 2d at 647;

Dennison v. Pennsylvania Department of Corrections, 268 F. Supp. 2d 387, 401 (E.D. Pa. 2003).

Jackson-Gilmore must therefore demonstrate that the jury could infer from the circumstances that Dickson and Thomas had a "meeting of the minds" and thus reached an understanding to threaten, harass, and intimidate her. Viewed in the light most favorable to plaintiff, I conclude there is sufficient evidence from which a jury could infer that a conspiracy existed. Thomas claims that Jackson-Gilmore has based her conspiracy claim solely on the ground that she saw Dickson enter Thomas's home on several occasions. (Thomas Mot. for Summ. J. 5.) However, plaintiff presents more evidence than Thomas suggests. As stated by Thomas, plaintiff claims she saw Dickson enter into Thomas's home on several occasions, including once at two o'clock in the morning. (Jackson-Gilmore Dep. 25:15-24.) On this latter occasion, both defendants left together in his vehicle. (*Id.*) In addition, Jackson-Gilmore testified that on the day she was arrested, Dickson entered Thomas's home from the rear (*Id.* at 45:1-8), and then later used her front steps as a place to wait (*Id.* at 46:12-21). If these facts are accepted as true, a jury could reasonably believe that these events give rise to the inference that Dickson and Thomas had a relationship and an opportunity to reach a meeting of the minds.

Additional inferences that Dickson and Thomas reached an agreement can be drawn from Dickson's alleged comments to Jackson-Gilmore. According to Jackson-Gilmore's testimony, Dickson admitted he was at her house on behalf of a female "neighbor" when he threatened Jackson-Gilmore in December 1999. (*Id.* at 5:10-16.) Dickson also aggressively confronted Jackson-Gilmore about Thomas's damaged car, and lied to Jackson-Gilmore by stating he actually saw Jackson-Gilmore damage the car. (*Id.* at 28:14-29:1.) These actions raise the reasonable inference that Dickson and Thomas had a relationship, that Dickson was willing to lie for

Thomas, and that they had a "meeting of the minds" as to how to proceed against her. A reasonable person could also infer that the actions of Thomas and Dickson were not sheer coincidence. While the evidence of a conspiracy is not overwhelming, Jackson-Gilmore presents more than just speculative theories. All that is required, according to the Supreme Court, is a possibility that the jury can infer from the circumstantial evidence that Thomas and Dickson had a meeting of the minds and reached an understanding to use Dickson's authority to harass and threaten Jackson-Gilmore. *Adickes*, 298 U.S. at 158. Therefore, because plaintiff has demonstrated there is a genuine issue of material fact as to whether a conspiracy existed between Thomas and Dickson, the court must deny Thomas's motion for summary judgment on this count.

2. Conspiracy Claims Brought Pursuant to § 1985(3)

However, Jackson-Gilmore fails to present a genuine issue of material fact as to the existence of a conspiracy with discriminatory animus under 42 U.S.C. § 1985(3). Section 1985(3) prohibits conspiracies predicated on "racial, or perhaps otherwise class-based, invidiously discriminatory animus."[12] *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971). In order to survive summary judgment on a 42 U.S.C. § 1985(3) claim, the plaintiff must allege "(1) a conspiracy; (2) motivated by a racial or class based discriminatory animus designed to deprive, directly or indirectly, any person or class of persons . . . [of] the equal protection of the laws; (3) an act in furtherance of the conspiracy; and (4) an injury to person or property or the deprivation of any right or privilege of a citizen of the United States." *Lake v. Arnold*, 112 F.3d 682, 685 (3d Cir.

[12]In relevant part, 28 U.S.C. § 1985(3) "provides for recovery of damages against 'two or more persons in any State [who] conspire . . . for the purpose of depriving . . . any person of having and exercising any right or privilege of a citizen of the United States.'" *Stephens v. Longo*, 122 F.3d 171, 184 (3d Cir. 1997) (quoting 28 U.S.C. § 1985(3)).

1997); *Ridgewood Board of Education v. N.E.*, 172 F.3d 238, 253-54 (3d Cir. 1999). First, Dickson and Thomas assert that plaintiff provides no factual basis for a conspiracy. As I have already determined above that plaintiff has provided sufficient proof of a conspiracy, summary judgment is not appropriate on this ground. *Stephens v. Kerrigan*, 122 F.3d 171, 184 (3d Cir. 1997). However, Thomas and Dickson also argue that plaintiff has provided insufficient proof that they conspired to deprive plaintiff of constitutional rights because of race or class. With this, the court agrees.

Under § 1985(3), there must be "some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action." *Griffin*, 403 U.S. at 102. Such animus "implies more than intent as volition or intent as awareness of consequences. It implies that the decisionmaker . . . selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 272 (U.S. 1993) (citation omitted).

While there is no question that Jackson-Gilmore, an African-American, is a member of a protected class, she has presented insufficient evidence that Thomas, an African-American, and Dickson, a Caucasian, acted with discriminatory animus. Plaintiff argues that a such an animus can be inferred solely from Dickson's statement that he would take Jackson-Gilmore's "black ass" to jail. (Jackson-Gilmore Resp. to Thomas' Summ. J. Mot. 10.) However, "a conspiracy claim based upon § 1985(3) requires a *clear showing* of invidious, purposeful and intentional discrimination between classes or individuals." *Robinson v. McCorkle*, 462 F.2d 111, 113 (3d Cir. 1972) (emphasis added). A single morally offensive comment does not reach this threshold of proof. Courts have held that such a remark, while insensitive and repugnant, is insufficient to

raise a genuine issue of material fact for trial. *Jacobs v. City of Port Neches*, 1998 U.S. Dist. LEXIS 8900, *17-18 (E.D. Tx. 1998) (in a case where the only evidence to which plaintiff points was his testimony that the police officer referred to plaintiff's "black ass," the court found that while the remark was insensitive and could promote lack of confidence in the officer, it amounted to an isolated, tenuous, stray comment insufficient to raise a genuine issue of material fact); *Travis v. Board of Regents University of Texas*, 122 F.3d 259, 264 (5th Cir. 1997) (isolated comment made by dean that female professor was not "tough enough" was insufficient to support sex discrimination claim). Thus, viewing all the evidence in the light most favorable to Jackson-Gilmore, Dickson's single offensive comment does not sufficiently demonstrate that Dickson purposely selected his particular course of action because of Jackson-Gilmore's race.[13]

Moreover, plaintiff presents no evidence that Thomas had any racial animus toward Jackson-Gilmore, or, for that matter, purposefully set out to racially discriminate against her. Nor does Thomas's association with Dickson allow for that conclusion. Even if Dickson's comment was sufficient evidence to demonstrate discriminatory animus under § 1985(3), "the First Amendment requires more than evidence of association to impose liability for conspiracy and, in fact, prohibits liability on that basis alone." *Barnes Foundation v. Township of Lower Merion*, 242 F.3d 151, 163 (3d Cir. 2001) (citing *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 919 (1982) and *Pfizer Inc. v. Giles*, 46 F.3d 1284, 1289 (3d Cir. 1994)). "For liability to be imposed by reason of association alone, it is necessary to establish that the group itself possessed unlawful

[13] In addition, it is curious to note that Jackson-Gilmore alleges Dickson's primary motivation was based on some undefined relationship with Thomas, an African-American, while simultaneously alleging that Dickson acted against Jackson-Gilmore because of his desire to racially discriminate against African-Americans.

goals and that the individual held a specific intent to further those illegal aims." *Claiborne Hardware*, 458 U.S. at 920. Jackson-Gilmore presents absolutely no evidence that Thomas had the specific intent to racially discriminate against her. As this paucity of evidence "could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" *Matsushita*, 475 U.S. at 587 (citations omitted). The defendants' summary judgment motions will therefore be granted on the § 1985(3) claims.

D. State Law Assault and Battery Claims

Finally, Dickson argues that Jackson-Gilmore's state law assault and battery claims should be dismissed because plaintiff cannot establish the elements of any of her federal claims.[14] However, as I discussed above, plaintiff's federal § 1983 claims survive summary judgment. As such, the exercise of supplemental jurisdiction under 28 U.S.C. § 1367(a) remains proper over Jackson-Gilmore's state law claims.[15] Dickson's request for summary judgment on these state claims will therefore be denied.

IV. CONCLUSION

In short, the court grants summary judgment as to the § 1985(3) conspiracy claim because, despite viewing the evidence in the light most favorable to Jackson-Gilmore, she has failed to demonstrate a genuine issue of material fact as to whether Thomas and Dickson acted with

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[14] Dickson does not argue that Jackson-Gilmore has failed to demonstrate a genuine issue of material fact as to the elements of assault and battery.

[15] Section 1367(a) states that "in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." Here, the assault and battery claims arise out of the same operative facts as the § 1983 claims: the alleged excessive force.

discriminatory animus. Thus, the § 1985(3) claim against both Dickson and Thomas does not survive for trial.

Summary judgment is denied, however, on issues of the statute of limitations, whether Dickson was acting "under color of law" pursuant to § 1983, whether a § 1983 conspiracy existed between Dickson and Thomas, and on the claims brought pursuant to Pennsylvania state law. On these matters, there remain genuine issues of material fact to be resolved by a jury.

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSEPHINE JACKSON-GILMORE, Plaintiff,	:	CIVIL ACTION
v.	:	NO. 04-3759
SCOTT DIXON, *et al*, Defendants.	:	

Order

And now, this _____ day of November 2005, upon consideration of the motion for summary judgment of defendant Scott Dixon (Document No. 15) and the motion for summary judgment of defendant Stephanie Thomas (Document No. 16) and plaintiff's responses thereto, **IT IS HEREBY ORDERED** that:

1. The motions are **GRANTED** as to all conspiracy claims based on 42 U.S.C. § 1985(3) and judgment is entered in favor of defendants and against plaintiff on those claims.

2. All other issues raised in the motions are **DENIED**.

3. Plaintiff's counsel is reminded of his obligation under the scheduling order to contact Magistrate Judge Charles B. Smith to arrange a convenient date for all parties to attend a settlement conference.

4. Trial is **SCHEDULED** for **January 3, 2006 at 10:00 a.m. in Courtroom 14-B**.

_____

William H. Yohn, Jr., Judge